84TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1833

JUANITA GIBSON LEWIS

FEBRUARY 28, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5580]

The Committee on the Judiciary to whom was referred the bill (H. R. 5580) for the relief of Juanita Gibson Lewis, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide that national service life insurance represented by certificate numbered N–195–931–199 issued to Harvey C. Lewis shall be considered to have been in full force and effect at the time of his death, and to direct the Administrator of Veterans' Affairs to pay such insurance from the national service life-insurance appropriation to Juanita Gibson Lewis, the widow of Harvey C. Lewis, who is the designated beneficiary of the insurance. Premiums unpaid on the insurance for the period beginning January 23 and ending on June 11, 1945, are to be deducted from amounts payable to Mrs. Lewis as the principal beneficiary of the insurance.

STATEMENT

The veteran, Harvey C. Lewis, committed suicide on June 11, 1945. In August of that year Mrs. Lewis filed an application for death compensation based on the fact that his death was service connected. She was unsuccessful at that time. In July of 1950 she requested that her claim be reopened, and additional evidence was produced in support of her claim. On August 2, 1951, the Veterans' Administration determined that the veteran's death was service connected, and an award of death compensation was made to Mrs. Lewis. In this

subsequent consideration evidence was submitted showing that commencing early in 1945 the veteran was not able to work, and that he became totally disabled and had to quit his employment.

As disclosed by the report furnished this committee by the Veterans' Administration, a claim for the waiver of premiums on the national service life insurance of Harvey C. Lewis was filed dated August 13, 1951, and in connection with that claim the Veterans' Administration determined that the veteran was totally disabled for insurance purposes from February 23, 1945, to the date of his death from suicide on June 11, 1945. The date of February 23, 1945, was within the period that the national service life insurance of Harvey C. Lewis was still in force under premium-paying conditions. However, it was determined by the Solicitor of the Veterans' Administration that proof of total disability of the insured received by the Veterans' Administration more than 6 years after the death of the insured does not have the effect of keeping the insurance in force by waiver of premiums when the proof was not submitted by or on behalf of either the legally competent principal beneficiary or the minor contingent beneficiary within 1 year of the death of the insured. As a result the claim for insurance benefits was denied. This decision of the Administrator of Veterans' Affairs is appended to this report. An action by the beneficiaries in the Federal courts was decided adversely to them on the grounds that they had not made a timely claim nor had they brought suit within the time limit set forth in 38 United States Code, sec. 445.

After a study of the facts of this matter the committee feels that it is one which merits relief. As has been noted, there was actually a determination that the veteran was totally disabled for insurance purposes from February 23, 1945, till his death by suicide, but the claim was not granted because the application for waiver of premiums was not made in time. The committee feels that under these circumstances relief should be granted to the widow, and therefore recommends that the bill be favorably considered.

ROPESVILLE, TEX., *July 8, 1945.*

H. L. MCCOY,
Director of Insurance,
Veterans' Administration,
Washington 25, D. C.

DEAR SIR: I have been advised that you can tell me if my husband's Government insurance is in force. Harvey C. Lewis, 38692940 inducted in service (Army), March 24, 1944, at Fort Sill, Okla., honorably discharged December 7, 1944 for reason of AR–615–362 dependency.

I do not know whether payments were made on this insurance after his discharge.

His death occurred, June 11, 1945.

Sincerely yours,

MRS. HARVEY C. LEWIS.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington 25, D. C., November 7, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CELLER: This has further reference to your request for a report by the Veterans' Administration on H. R. 5580, 84th Congress, a bill for the relief of Juanita Gibson Lewis, which provides as follows:

"That the national service life insurance, represented by the certificate numbered N–195–931–199, issued to Harvey C. Lewis (Veterans' Administration claim numbered XC–4–143–457), shall be held and considered to have been in full force and effect at the time of the death of the said Harvey C. Lewis on June 11, 1945, and the Administrator of Veterans' Affairs shall pay such insurance (from the national service life-insurance appropriation) to Juanita Gibson Lewis, widow of the said Harvey C. Lewis and designated beneficiary of such insurance: *Provided, however,* That the total amount of the premiums unpaid on such insurance for the period beginning January 23 and ending on June 11, 1945, both dates inclusive, shall be deducted from the amounts payable to the said Juanita Gibson Lewis as principal beneficiary of such insurance."

The veteran, Harvey C. Lewis, XC4143457, entered active service on March 24, 1944, and was discharged on December 7, 1944, on account of dependency. At the time of his discharge there was no indication of the existence of any disability. He died by suicide on June 11, 1945.

While in service the veteran applied for and was granted $10,000 national service life insurance under certificate No. 15931199, issued on the 5-year level premium term plan, for which he designated Juanita Lewis, wife, as principal beneficiary, and Connie Nell Lewis, child, as contingent beneficiary. Premiums were paid through January 23, 1945, and the insurance lapsed for nonpayment of premium due January 24, 1945, and was not in force on the date of the veteran's death. The veteran filed no claim for waiver of premiums during his lifetime.

In reply to an inquiry by Mrs. Lewis received on July 12, 1945, relative to national service life insurance, she was informed that the veteran's insurance had lapsed for nonpayment of premiums.

On August 5, 1945, Mrs. Lewis filed application for death compensation or pension wherein she indicated that she was not filing, and had not filed, a claim for Government insurance. Compensation was denied on the ground that the veteran's death was not due to, or the result of, a service-connected disease or injury; and non-service-connected death pension was denied on the ground that the existence of a World War II service-connected disease or injury at death was not established. Under date of May 21, 1946, Mrs. Lewis was informed of her right to appeal or to submit additional evidence within 1 year from that date. However, no further action was taken by Mrs. Lewis until by letter dated July 10, 1950, she requested the reopening of her claim, in support of which additional evidence was submitted in September 1950.

On August 2, 1951, after further development of the evidence by the Veterans' Administration, it was determined that the veteran's death was service-connected, and an award of death compensation was made to Mrs. Lewis, which is continuing in the current amount of $87 monthly. Included in the evidence supporting the determination is testimony by Mrs. Lewis to the effect that commencing early in 1945 the veteran was not able to work, and that he became totally disabled and had to quit his employment.

A claim dated August 13, 1951, for waiver of premiums on the lapsed national service life insurance in the case, was filed by Mrs. Lewis in behalf of the then minor contingent beneficiary. The Veterans' Administration thereafter determined that the veteran was totally disabled for insurance purposes, from February 23, 1945 (while the insurance was yet in force under premium paying conditions) to June 11, 1945, the date of his death, a period of less than 6 months. However, in an opinion of the Solicitor (now General Counsel) of the Veterans' Administration, approved by the Administrator September 9, 1952, it was determined that proof of total disability of the insured under the provisions of section 602 (r) of the National Service Life Insurance Act of 1940 (38 U. S. C. 802 (r)), received by the Veterans' Administration more than 6 years after the death of the insured, does not have the effect of keeping the insurance in force (by waiver of premiums) where such proof was not submitted by or on behalf of either the legally competent and alive principal beneficiary or the minor contingent beneficiary within 1 year after the death of the insured. Accordingly, the claim for insurance benefits was denied. (A copy of Administrator's Decision No. 916 is enclosed.)

The beneficiaries brought suit in the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 5123, and after trial of the case on its merits, judgment was rendered in favor of the defendant, the United States, on October 2, 1953. The plaintiffs' appeal in the United States Court of Appeals for the Fifth Circuit, Case No. 14939, was considered on its merits, and the judgment of the lower court was affirmed (217 F. 2d 88). The appellate court further determined that the failure of the principal beneficiary to make a timely claim and bring suit within the time limit set forth in 38 United States Courts of Appeals 445, prevents the bringing and maintenance of the suit. This constituted final judicial determination of the issue.

Section 602 (n) of the National Service Life Insurance Act of 1940 (54 Stat. 1011) as amended (38 U. S. C. 802 (n)), provides in pertinent part:

"Upon application by the insured and under such regulations as the Administrator may promulgate, payment of premiums on such insurance may be waived during the continuous total disability of the insured, which continues or has continued for six or more consecutive months, * * * *And provided further.* That in the event of death of the insured without filing application for waiver, the beneficiary, within one year after the death of the insured * * * or, if the beneficiary be insane or a minor, within one year after removal of such legal disability, may file application for waiver with evidence of the insured's right to waiver under this section * * *."

Section 602 (r) of the act (58 Stat. 762–3; 38 U. S. C. 802 (r)) provides in pertinent part:

"In any case in which premiums are not waived under subsection (n) hereof solely because the insured died prior to the continuance of total disability for 6 months, and proof of such facts, satisfactory to the Administrator of Veterans' Affairs, is filed by the beneficiary with the Veterans' Administration within * * * one year after the insured's death, * * * his insurance shall be deemed to be in force at the date of his death, * * * *Provided*, That if the beneficiary be insane or a minor, proof of such facts may be filed within one year after removal of such legal disability."

It is under these sections that the claim for insurance benefits in the case was denied.

The validity of a policy of national service life insurance is contingent upon the timely payment or waiver of premiums under conditions specified by the governing law. The facts in this case are that the insurance lapsed for nonpayment of premium due January 24, 1945, and the requirements for the granting of a waiver of premiums were not met, thereby precluding any revival of the lapsed insurance by waiver of premiums. The enactment of H. R. 5580 would be a conclusive legislative determination, contrary to fact, that the national service life insurance granted the veteran was in full force and effect at the time of his death, thus establishing liability under a policy of insurance which, in fact, lapsed prior to death, and under which both the executive and judicial branches of the Government have determined there is no liability. The Veterans' Administration is not aware of any justification for the payment of such a gratuity.

Enactment of the proposed legislation would be discriminatory in that it would single out the case of Mrs. Lewis for special legislative treatment to the exclusion of other cases which must be denied where similar circumstances exist, and might serve as a precedent for requests for like treatment in similar cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

H. V. Higley, *Administrator.*

Administrator's Decision, Veterans' Administration, No. 916

September 29, 1952.

Subject: Entitlement to insurance benefits where proof of total disability submitted subsequent to 1 year after death of insured; applicability of section 602 (r), National Service Life Insurance Act of 1940, as amended

Question presented.—Does proof of the total disability of the insured under the provisions of section 602 (r) of the National Service Life Insurance Act of 1940, as amended, received by the Veterans' Administration more than 6 years after the death of the insured, have the effect of keeping the insurance in force where neither the principal beneficiary, who is legally competent and alive, nor the

contingent beneficiary, who is a minor, submitted proof within 1 year after the death of the insured?

Facts.—The insured was granted $10,000 National Service Life Insurance on March 24, 1944. In his application for insurance he designated his wife as principal beneficiary and his minor child as contingent beneficiary. He was discharged from active service on December 7, 1944, on account of dependency, the discharge papers containing no indication of the existence of a disability. Insurance premiums were paid through January 23, 1945, but no premiums were paid thereafter. The insured died on June 11, 1945, as the result of a self-inflicted gunshot wound. He filed no claim for waiver of premiums during his lifetime. The insurance application carried the instruction that the contingent beneficiary would take monthly installments of insurance if the principal beneficiary predeceased the insured, or take any remaining monthly installments if the principal beneficiary survived the insured but died before all installments were paid.

The Veterans' Administration received an inquiry from the insured's widow on July 12, 1945, as to whether the insurance was in force, and she was advised that the premiums were paid through January 23, 1945, but that the insurance lapsed for nonpayment of premiums thereafter. On August 5, 1945, the widow filed a claim for death pension (compensation). In answer to a specific question on the form, she stated that she was not filing and had not filed a claim for Government insurance. The claim was denied for lack of a showing of service connection. In 1950 the widow requested that the death compensation or pension claim be reopened, and in support thereof she submitted certain evidence concerning the insured's health condition. On August 2, 1951, as a result of evidence developed in a Veterans' Administration field examination conducted in 1951, the Dependents Pension Board rendered a decision, establishing, for compensation purposes, service connection for the insured's disability of psychosis resulting in suicide by gunshot wound.

On August 13, 1951, no communication pertaining to insurance having been received by the Veterans' Administration in the meantime, the widow, for and on behalf of the minor contingent beneficiary, executed Veterans' Administration Form 9–357c, Statement of Claim for Total Disability Benefits Under National Service Life Insurance Act, and stated therein that the insured had been totally disabled from the date of his discharge from service on December 7, 1944. In connection with this application, it has been determined, on the basis of proof contained in the Veterans' Administration field report received March 23, 1951, that the insured was not totally disabled from December 7, 1944, as alleged, but was totally disabled from February 23, 1945, to June 11, 1945.

Comment.—Prior to a consideration of the sufficiency and timeliness of the claim and proof, it is to be observed that, on the basis of the determination heretofore made respecting the period of the insured's total disability, a waiver of premiums is not allowable under the provisions of section 602 (n) of the National Service Life Insurance Act, as amended (38 U. S. C. 802 (n)), because the total disability was not continuous for 6 or more months. Hence, it is necessary to determine whether the provisions of section 602 (r) of the act (38 U. S. C. 802 (r)) may be invoked to render the insurance payable. Section 602 (r) reads as follows:

"In any case in which premiums are not waived under subsection (n) hereof solely because the insured died prior to the continuance of total disability for six months, and proof of such facts, satisfactory to the Administrator of Veterans Affairs, is filed by the beneficiary with the Veterans' Administration within one year after the enactment of this amendment, or one year after the insured's death, whichever is the later date, his insurance shall be deemed to be in force at the date of his death, and the unpaid premiums shall become a lien against the proceeds of his insurance: *Provided*, That if the beneficiary be insane or a minor, proof of such facts may be filed within one year after removal of such legal disability."

If the prerequisite conditions described in section 602 (r) are met, the result is that the insurance must be deemed to be in force at the date of death of the insured, and, subject to the establishment of a lien for unpaid premiums, the proceeds of the insurance become payable according to the terms thereof. The question, then, is whether, in the circumstances reflected in the stated facts, the prerequisite conditions exist. On the facts here considered, it is not possible to find compliance with these conditions.

The first specification of section 602 (r) is that the sole reason for nonwaiver of premiums under section 602 (n) be that the insured died prior to the continuance of total disability for 6 months. To meet this requirement it must first appear that there is no reason for nonwaiver under (n) other than the fact that the in-

sured's disability did not continue for the required period. In other words, subsection (r) presupposes compliance with every prerequisite to waiver under subsection (n) except continuance of total disability for the required period. While it has been held that the filing of a specific claim under subsection (r) is not material (Administrator's Decision No. 796, dated October 7, 1948), it is apparent that the reason a specific claim under that subsection is not always essential is the fact that the subsection presupposes compliance with the claim requirements of subsection (n) and inabllity to allow the latter claim solely because of insufficient duration of disability.[1]

The fourth proviso of section 602 (n) permits the beneficiary (in cases where, as here, the insured died more than 1 year prior to August 1, 1946, without filing application for waiver) to file application for waiver with evidence of the insured's right to waiver within 1 year after August 1, 1946, or, if the beneficiary be insane or a minor, within 1 year after the removal of such legal disability. No claim for waiver of premiums was filed in this case prior to August 1, 1947; nor was any claim for insurance filed prior to that date. It has been held that a claim for insurance, if filed in time, is a claim for waiver if necessary to mature the insurance (Administrator's Decision No. 806, dated February 8, 1949). The principal beneficiary's letter of July 8, 1945, was not a claim for waiver of premiums under subsection (n); nor was it a claim for insurance benefits. It was a mere request for information concerning the status of the insurance, and it was fully answered in a communication dated February 28, 1946, which gave all the information available to the Veterans' Administration concerning the insurance. It contained no claim or demand for the payment of insurance and no suggestion that the insured had been disabled. Indication that the principal beneficiary did not regard her letter as a claim is to be found in her statement on the pension claim that she was not filing and had not filed a claim for Government insurance. The letter must therefore be treated in the same way the courts have treated similar inquiries in connection with questions relating to the existence of a disagreement or the timeliness of suit under the provisions of section 19, World War Veterans' Act, 1924, as amended (38 U. S. C. 445). See, for example, *Wilson* v. *United States*, 70 F. 2d 176 (CCA 10th); *United States* v. *Peters*, 62 F. 2d 977 (CCA 8th); *United States* v. *Collins*, 61 F. 2d 1002 (CCA 4th); *Corn* v. *United States*, 74 F. 2d 438 (CCA 10th); *Chavez* v. *United States*, 74 F. 2d 508 (CCA 10th); *Werner* v. *United States*, 86 F. 2d 113 (CCA 2d); *McEntire* v. *United States*, 115 F. 2d 429 (CCA 5th); *Cannon* v. *United States*, 45 F. Supp. 106 (E. D. Pa.), affirmed *per curiam* 128 F. 2d 452 (CCA 3d). These cases hold that an inquiry is not a claim. The essentiality of a claim in respect to the allowance of a waiver of premiums under subsection (n) in a case of this nature is plain. Likewise essential is the timeliness of the claim. *Scott* v. *United States*, 189 F. 2d 863 (CA 5th), cert. den. 342 U. S. 878, 96 L. Ed. (Adv. Op.) 65; *United States* v. *Baker*, 191 F. 2d 1004 (CA 10th); *Aylor* v. *United States*, 194 F. 2d 968 (CA 5th); *Hendricks* v. *United States*, 94 F. Supp. 142 (E. D. Tenn.). Indeed, as said in *Hendricks* v. *United States*, supra:

"The right of waiver, under this section of the Act, is not absolute upon total disability but sets up only on application made. Therefore, the application is as necessary an element for waiver as the total disability."

It must be concluded, therefore, that the principal beneficiary, who is not under any legal disability, did not file an effective application for waiver of premiums under the provisions of subsection (n); nor did she, as such principal beneficiary, do anything to satisfy the requirement as to timeliness of claim under subsection (n) either for the purposes of such subsection or for the purpose of meeting the prerequisite conditions to the applicability of subsection (r). Even if it could be held that she filed a timely claim, her failure to submit, prior to August 1, 1947, "evidence of the insured's right to waiver," as subsection (n) plainly requires, would remain an insurmountable obstacle to the allowance of the claim.

Another insuperable obstacle to the possible applicability of subsection (r) to save the insurance, insofar as the applicability of that subsection may depend upon action of the principal beneficiary, is the fact that the principal beneficiary in this case did not, within 1 year after the insured's death, i. e., prior to June 11, 1946, submit any proof whatsoever of facts rendering that subsection appli-

[1] Conceivably, even though a claim under subsection (n) has not been filed, a claim or application under subsection (r) might not be necessary if the principal beneficiary, within the time specified therein, submits proof which negatives applicability of subsection (n) by negativing the existence of total disability for 6 months but establishes continuous total disability for less than 6 months commencing prior to the expiration of insurance protection and continuing to the date of the insured's death. At least this might be so if proof of the death of the insured, of the principal beneficiary's identity, and of other such matters is otherwise at hand. No such situation is presented here.

cable. The facts which render subsection (r) applicable include (1) the submission of proof of the insured's total dissability commencing prior to the termination of insurance protection and extending to the date of the insured's death, and (2) the filing of a claim or application for waiver of premiums under subsection (n) and its denial solely upon the ground that the insured died prior to the continuance of total disability for 6 months. As to the latter, no difficulty would be encountered by the principal beneficiary if she had actually filed an application for waiver prior to June 11, 1946. She did not do so. As to the former, i. e., the submission of proof of total disability, it is plain that the principal beneficiary did not comply with the requirements of subsection (r) since she submitted no proof whatsoever during the crucial period.[2] It is obvious, therefore, that, insofar as action or nonaction of the principal beneficiary may be determinative, there is nothing to support a conclusion that the insurance is payable under that subsection. When the other essentials are not present, the existence of the insured's total disability for the required period is not enough.

For consideration at this juncture is the question whether, the principal beneficiary having failed to comply with the statutory conditions, the prerequisite conditions of subsection (r) are met by the contingent beneficiary's application for waiver filed August 28, 1951, more than 6 years after the insured died, and by the Veterans' Administration's acquisition of proof of total disability on March 23, 1951, in connection with the widow's claim for pension, which, it is to be observes was obtained prior to the filing of the contingent beneficiary's application. Implicit in this question are other inquiries, viz: whether a contingent beneficiary who claims during the life of a principal beneficiary becomes an adversary in respect of the rights of the principal beneficiary, or whether such a claim inures to the principal beneficiary; whether a minor contingent beneficiary who files claim or submits proof, or does both, during the lifetime of a qualified principal beneficiary must do so within the period applicable to the principal beneficiary; whether the claim or submission of proof or both by a minor cintingent beneficiary after a qualified principal beneficiary not under a legal disability has failed to do so within the time limited can save insurance under the provisions of subsection (r) which has theretofore been lost by the principal beneficiary's failure to take action timely.

The status and rights of a contingent beneficiary as such are not defined in the statutes, and, as to insurance maturing prior to August 1, 1946, they have not been defined by regulations. VA Regulation 3491, promulgated April 23, 1948 (title 38, C. F. R., section 8.91, 1949 Ed.), contains provisions respecting payment to contingent beneficiaries but only as to insurance maturing after August 1, 1946. It is not applicable here. As hereinabove set forth in the narrative statement of facts, however, the insured's application for insurance contained a specification which make plain that the contingent beneficiary takes nothing to long as the principal beneficiary lives. What the insured by his application specified, therefore, was, in effect, that the right of the contingent beneficiary as such is conditioned upon the death of the principal beneficiary prior to the payment of all monthly installments, and, of course, it is also conditioned upon the contingent beneficiary remaining alive to receive payment; that is to say, the right of a contingent beneficiary is necessarily a right in succession to the right of a qualified principal beneficiary to receive the insurance. To be sure, there are circumstances in which, during the life of the principal beneficiary, the contingent beneficiary becomes, in effect, the principal beneficiary, i. e., the first taker, as where the principal beneficiary cannot qualify because not within the restricted permitted class, or the principal beneficiary is disqualified by feloniously killing the insured; but these circumstances are not present here and the contingent beneficiary has no present, and may never acquire any, right to receive payment of the insurance proceeds.

In the instant case, no question is presented as to whether a principal beneficiary of insurance in full force and effect on the date of the death of the insured is disqualified. Neither subsection (n) nor subsection (r) contains any provision to the effect that the failure of an otherwise qualified principal beneficiary to take the action required to establish liability operates in a personal way on such beneficiary by disqualifying him and transferring the insurance to another next in line. On

[2] Since no proof whatever was submitted by the principal beneficiary within the prescribed period, it is not necessary to consider what degree or quantum of proof may be essential. Manifestly, for administrative payment at least, the proof must be sufficient to convince the appropriate officials that the claim should be allowed. Compare and contrast *United States* v. *Roberts*, 192 F. 2d 893 (CA 5th), a case involving subsection (r) in which the only point considered under said subsection was whether the determination of the Administrator was final and conclusive in respect to the existence of total disability for the required period. The court there held that the plaintiff-beneficiary was entitled to a trial de novo on the issue of disability, but it was not called upon to consider what quantum of proof the beneficiary was required to submit to the Veterans' Administration.

the contrary, the conditions set forth in these subsections relating to the filing of claim or the submission of proof are conditions precedent to liability *vel non* under the contract of insurance. In this case, they are conditions precedent to the very existence of insurance on the date of death of the insured, for it is obvious that premiums were not paid to maintain the insurance in force and it may not "be deemed to be in force" unless the conditions of subsection (r) have been met. Conditions of analogous import have quite generally been held to be conditions precedent to liability and, as such, enforced by the courts. For example, policy provisions in commercial insurance stipulating that due proof of disability must be submitted within specified periods have been held to be conditions precedent to the insurer's liability, with the result that failure to comply therewith relieves the insurer of any obligation under the contract. *Bergholm* v. *Peoria Life Insurance Co.*, 284 U. S. 489, 76 L. Ed. 416, 52 S. Ct. 230; *Rintoul* v. *Sun Life Assurance Co.*, 142 F. 2d 776 (CCA 7th); *Nalley* v. *New York Life Insurance Co.*, 138 F. 2d 318 (CCA 5th); *Avery* v. *New York Life Insurance Co.*, 67 F. 2d 442 (CCA 5th); *Chambers* v. *Franklin Life Insurance Co.*, 80 F. 2d 339 (CCA 5th); *Egan* v. *New York Life Insurance Co.*, 67 F. 2d 899 (CCA 5th); *New England Mutual Life Insurance Co.* v. *Cohen*, 83 F. 2d 163 (CCA 2d), reh. den. 83 F. 2d 1014; *Griffiths* v. *Massachusetts Mutual Life Insurance Co.*, 96 F. 2d 57 (CCA 2d); *Atlantic Life Insurance Co.* v. *Vaughan*, 71 F. 2d 394, 396 (CCA 6th); *Armstrong* v. *Kansas City Life Insurance Co.*, 12 F. Supp. 817 (N. D. Tex.). In *Nalley* v. *New York Life Insurance Co.*, supra, a policy provision for the restoration of insurance where default occurs during total disability if due proof of such disability be furnished within 6 months after default was considered in a case in which no prooof was made until 3 years after default. The court said:

"* * * Under the plain language of these provisions it is clear that waiver of premiums and payment of disability benefits are not conditioned simply upon the mere fact of occurrence of disability; there is by express terms the further requirement and condition that notice first be given and proof be made of such disability. Lack of knowledge, failure to know and understand the condition of his health is not enough to keep the policies alive. The insured must wholly comply with the unambiguous provisions of the contracts requiring notice. * * *"

Moreover, it was held in *Fidelity Mutual Life Insurance Co.* v. *Powell*, 74 F. 2d 525 (CCA 4th), that the submission to the company of due proof that the insured's death was through external, violent, and accidental means constituted a condition precedent to recovery under a double indemnity clause; and in *Maryland Casualty Co.* v. *Nellis*, 75 F. 2d 23 (CCA 6th), where the beneficiary did not know of the existence of a policy of accident insurance until more than 2 years after the insured's death but immediately thereafter filed claim and proof, it was held that the furnishing of proof of death within 2 months after the date of death, as the policy required, consituted a condition precedent to enforcement. See, to the same effect, *Llewellyn* v. *Commercial Casualty Insurance Co.*, 118 F. 2d 144 (CCA 7th). There are, to be sure, some cases dealing with other and dissimilar policy provisions which hold that liability becomes fixed when disability occurs and that the giving of notice and the furnishing of proof of disability are not conditions precedent to the fixing of liability but merely operate to defer payment. See, for example, *Illinois Bankers' Life Ass'n.* v. *Talley*, 68 F. 2d 4 (CCA 5th); *Boyett* v. *United States*, 86 F. 2d 66 (CCA 5th), a case construing a provision in a policy of United States Government Life Insurance issued under the World War Veterans' Act, 1924, as amended, which required that total permanent disability have its onset while the insurance remained in force but contained no stipulation as to any date for the submission of due proof. But these two cases last mentioned and others of a like nature are clearly distinguishable, and the holdings in them have no applicability here. To reiterate, there can be no doubt that the conditions specified in subsection (r) are conditions precedent to liability under a contract of insurance not otherwise in force under premium-paying conditions on the date of death of the insured. They are not to be regarded as limited to the matter of deferring payment; nor are they to be considered as conditions precedent merely to the qualification of a particular beneficiary to receive payment.

Since the prerequisite conditions of subsection (r) do not operate personally to disqualify one beneficiary who fails to act and thereby qualify another in his place, but operate instead upon the Government's liability, it is obvious that when and if claim is made and proof is submitted under conditions which meet the requirements of subsection (r) and the insured's disability for the required period is established, the insurance is to be regarded as in full force and effect on the date of death of the insured, and its effectiveness in all other respects, subject only to the required deduction for unpaid premiums, is the same as though pre-

miums had been paid by the insured to the date of his death. Hence, in and such case, the insurance becomes payable to the principapl beneficiary designatey by the insured and, if the insured's death occurred prior to August 1, 1946, in the manner provided by section 602 (h) (1) or (2) (38 U. S. C. 802 (h)). It is not payable to the contingent beneficiary so long as the principal beneficiary lives, and, of course, the contingent beneficiary may never become entitled to any portion of the insurance. In other words, upon the death of the insured while the insurance is in force the right to all of the insurance vests in the surviving qualified principal beneficiary subject only to be terminated by a condition subsequent, namely, the death of the principal beneficiary prior to receiving all installments that may be payable under section 602 (h) (1) or (2).[3] The contingent beneficiary's expectancy is therefore not adverse to and does not bar the right of the principal beneficiary. Hence, any claim or proof submitted by a contingent beneficiary during the lifetime of the principal beneficiary—assuming that the former may properly submit claim or proof in such circumstances—inures to the principal beneficiary and must be given consideration, if at all, as though submitted by or on behalf of the latter. Accordingly, such submission of claim or proof is subject to every limitation applicable to the principal beneficiary. If the principal beneficiary is not under a legal disability, the claim or proof, as the case may be, whether made by the principal beneficiary or by a contingent beneficiary even though under legal disability, must be made within 1 year from the date of death of the insured in order to render the insurance payable under subsection (r).[4] (See Administrator's Decision No. 806.)

A contrary conclusion would lead to consequences approaching absurdity. For example, liability under the contract might come to depend upon the point of time at which a decision is made in respect thereto. To illustrate: Suppose that the principal beneficiary in this case had filed claim and submitted proof 2 years after the death of the insured. A decision at that point would necessarily result in denial for lack of compliance with the statutory requirement; and a suit brought thereon would fail on the merits. (*Blanchette* v. *United States*, 102 F. Supp. 311 (D. C. Me.).) It is reasonable to suppose that four, five, or any number of years later a minor contingent beneficiary can set these solemn adjudications at naught by filing a new claim? Moreover, let it be supposed that the insured in this case, or in another similar case, is also survived by parents, brothers, and sisters; they, too, have expectancies subordinate only to the designated principal and contingent beneficiaries (sec. 602 (h) (3)). If the minor contingent beneficiary can revive and restore an expired claim or right, so also can any one of the others if he is under a legal disability. Consequences such as these could not have been contemplated. They are avoided by the conclusion here reached that claim or proof is required to be submitted within the time applicable to the principal beneficiary.

The holding in Administrator's Decision No. 806, that a contingent beneficiary may file an application for waiver under the last proviso of section 602 (n), is not inconsistent with the conclusion here stated that the claim or proof must be submitted within the time limitation applicable to the principal beneficiary. In none of the cases considered in Administrator's Decision No. 806 was there a claim for waiver by a contingent beneficiary under a legal disability filed after the time had expired within which a principal beneficiary could claim.

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[3] It is to be observed that in any case in which the insured's death occurs after August 1, 1946, and the insurance is payable in a lump sum, the principal beneficiary's right to receive all of the insurance is absolute and may not be terminated or defeated by any condition subsequent; if the principal beneficiary dies after the insured but before payment is completed, the remainder is payable, if there be no escheat, to the estate of the principapl beneficiary (sec. 602 (u) (38 U. S. C. 802 (u)); VA Regulation 3490, 38 C. F. R. § 8.90. 1949 Ed.).

[4] No authorities have been found on this precise question or on a closely analogous one. Perhaps the closest analogy in in *Winslow* v. *United States*, 147 F. 2d 157 (App. D. C.), which held that, despite the saving clause in 38 U. S. C. 445 for persons under a legal disability, an action by an infant beneficiary of insurance alleged to have matured under the provisions of section 305, World War Veterans' Act, 1924, as amended (38 U. S. C. 516), by the total permanent disability of the insured, was barred by limitations where the insured had permitted the statute to run during his lifetime. It is understood that the same district court (D. C., D. C.) reached the same result, without opinion, in another case in which a minor child of the nsured sued to recover insurance alleged to have matured under section 305 by the death of the insured, where insured's widow, the person first entitled under that section, permitted limitation to run against the claim during her lifetime. Likewise, of somewhat similar import is *Dowell* v. *United States*, 86 F. 2d 120 (CCA 5), which held, citing a number of authorities, that an action by the administrator of the insured's estate, in whom the right of action resided, was not saved from the bar of limitations by the minority of the sole distributee of the estate. The Dowell case was relied upon for the holding in Administrator's Decision No. 806 that the time limitation for filing claim under section 602 (n) is not tolled or extended where the insurance is payable to the estate of the insured and all, or some, of the distributees of the estate are under legal disability.

Since no claim or proof of the required facts was submitted by or on behalf of the principal beneficiary within 1 year after the date of death of the insured, the conditions of section 602 (r) were not met by the later claim of the minor contingent beneficiary and the procurement of proof of total disability approximately 6 years after the death of the insured. The insurance cannot, therefore, be deemed to have been in force on the date of the insured's death.

Held.—Proof of the total disability of the insured under the provisions of section 602 (r) of the National Service Life Insurance Act of 1940, as amended, received by the Veterans' Administration more than 6 years after the death of the insured, does not have the effect of keeping the insurance in force where neither the principal beneficiary, who is legally competent and alive, nor the contingent beneficiary, who is a minor, submitted proof within 1 year after the death of the insured. (Opinion of the Solicitor, Veterans' Administration, dated August 25, 1952, approved by the Administrator, September 9, 1952, XC–4 143 457.)

This decision is hereby promulgated for observance by all officers and employees of the Veterans' Administration.

CARL R. GRAY, Jr.,
Administrator of Veterans' Affairs.

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